

**OFFICE OF THE ATTORNEY GENERAL OF TEXAS****AUSTIN****GERALD C. MANN  
ATTORNEY GENERAL**

Honorable Wayne Lafevre  
County Auditor  
Clay County  
Henrietta, Texas

Dear Sir:

Opinion No. 0-4691

Re: Under the facts submitted would a contract entered into between the Clay County Commissioners' Court and Tax Valuation Engineers, for the valuation of all oil and gas utilities rendered in Clay County, be valid?

Your letter of recent date requesting the opinion of this department on the above stated question reads as follows:

"I wish to make a request for an opinion on the following question:

"Would a contract entered into between the Clay County Commissioners Court and Pritchard & Abbott, Tax Valuation Engineers, whereby Clay County Commissioners Court contract to pay Pritchard & Abbott \$500.00 per million dollars valuation of all oil and gas and utilities rendered in Clay County, be valid? There was not placed in the budget for the year in which this contract is made estimates to pay for said contract. Also payments

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for such services would exceed the revenues from the General Fund if other obligations already budgeted were paid. There is no court order existant setting up a tax rate to take care of payment, or the creating of an interest & sinking fund tax rate. And said contract was never read in Open Court even though the chairman of the court, had asked the commissioners if they cared to read or have read said contract. Also the contract is signed by the four members of the court but not by the County Judge. But there is an order approving said contract on the minutes of said court.

"I would appreciate a reply at your earliest convenience."

In the case of Roper vs. Hall, 280 S.W. 289, the Waco Court of Civil Appeals sustained a contract made by Freestone County with Thomas Y. Pickett for collecting and compiling information concerning oil properties and the fixing of values thereon. It was pointed out as the basis for that holding that those services involved an extraordinary skill not possessed by an ordinary person. The power of the commissioners' court to make contracts of the character involved in Roper vs. Hall, supra, was recognized in the case of Marquart vs. Harris County, 117 S.W. (2d) 494.

We quote from the case of Roper vs Hall, supra, as follows:

"Express authority however, is given to the commissioners' court over the subject of the levying of taxes and requiring all property situated in the county to be properly assessed and to bear its proportion of the burden of taxation according to its value. See authorities above cited. The general powers so given to the commissioners' courts are of little practical value without the further authority to use adequate means to insure the

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proper, intelligent and effective exercise thereof. The Constitution requires and public policy demands that all taxable property shall contribute its just proportion to the expenses of government. The purpose of the contract under consideration was to aid in securing such result. The services contracted to be rendered called for information and experience not possessed by the ordinary person. So far as they affected the discovery, assessment, and valuation of unrendered oil properties, they could not have been performed by the county assessor unless he possessed extraordinary information and experience along the required lines. He testified in the case, and under oath disclaimed such qualification. Neither could the commissioners' court, sitting as an equalization board, perform its functions effectively without such expert aid. The court so declared, in effect, when it entered into the contract. It does not appear that it was the intent or effect of the contract that Pickett should perform the duties imposed by law on any of the officers concerned. On the contrary, it does appear that its purpose was merely to aid such officers in the effective performance of their respective duties . . . .

"The making of the contract under consideration was within the implied power possessed by the commissioners' court of Freestone county, and such contract did not contemplate the performance by said Pickett of duties imposed by law upon either the assessor or the commissioners' court . . . ."

We do not have the contract in question before us, therefore, we can express no opinion as to the validity of the same. However, the above mentioned cases expressly hold that the making of such a contract for the collection and assembling of information concerning oil properties and fixing of the values thereon is within the power possessed by the commissioners' court.

Under the facts stated in your letter, it is apparent that when the budget for the county was prepared

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the budget contained no provision for expenditures such as are here involved.

Article 689a-11 provides in part:

"... When the budget has been finally approved by the Commissioners' Court, the budget, as approved by the Court shall be filed with the Clerk of the County Court, and taxes levied only in accordance therewith, and no expenditure of the funds of the county shall thereafter be made except in strict compliance with the budget as adopted by the Court, except that emergency expenditures, in case of grave public necessity, to meet unusual and unforeseen conditions which could not, by reasonably diligent thought and attention, have been included in the original budget, may from time to time be authorized by the Court as amendments to the original budget. In all cases where such amendment to the original budget is made, a copy of the order of the Court amending the budget shall be filed with the Clerk of the County Court, and attached to the budget originally adopted."

As no expenditures of the funds of the County shall be made except in strict compliance with the budget as adopted by the Court and as the budget contains no provision with reference to expenditures, such as are involved, it is our opinion that the County cannot expend its funds for such purpose, without having complied with the budget law.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

*Ardell Williams*

Ardell Williams  
Assistant

APPROVED JUL 1, 1942

*Garret H. Mann*

ATTORNEY GENERAL OF TEXAS

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